No.

In The Supreme Court of The United States

October Term, 1960

PAUL JEROME ACCARDY,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA, AND TO THE DISTRICT COURT OF APPEAL, FOURTH APPELLATE DISTRICT, STATE OF CALIFORNIA

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IN THE SUPREME COURT OF THE

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PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA,
AND TO THE DISTRICT COURT OF APPEAL,
FOURTH APPELLATE DISTRICT,
STATE OF CALIFORNIA

Petitioner prays that a Writ of Certiorari issue to review the judgment of the District Court of Appeal, Fourth Appellate District, State of California, originally filed August 19, 1960; and of the Order of the District

Court of Appeal, Fourth Appellate District, State of California, made September 8, 1960, denying the petition for rehearing filed by petitioner; and from the Order of the Supreme Court of the State of California made October 13, 1960, denying the petition for hearing in the Supreme Court of the State of California, after decision by the District Court of Appeal and denial of rehearing by the District Court of Appeal.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court of Appeal, Fourth Appellate District, State of California, filed August 19, 1960, is reported in 184 Advance California Appellate Decisions, 1, and is copied in Appendix "A" infra. The ruling of the District Court of Appeal in denying petitioner's application for rehearing on September 8, 1960, is set forth in Appendix "B" infra; the Order of the Supreme Court of October 13, 1960 denying the petition for hearing in the Supreme Court is reported in 54 A.C. No. 27 under date October 21, 1960 and is set forth in Appendix "C" infra.

QUESTIONS INVOLVED

1. When a state constitution provides "that the right of trial by jury shall be secured to all, and remain inviolate", can a trial court of that state, and the appellate courts of that state, deprive an accused of a jury trial on a fundamental fact question?

2. Is an individual denied due process of law and the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United

States (when his house is searched without a search warrant and an issue of fact as to whether or not he consented to such search is presented, and where the constitution provides for jury trial, and where the supreme court of the state has declared the question of voluntary consent to be a question of fact) by the act of the trial court in denying the accused a jury trial on the factual question of consent and the appellate courts of the state have ignored the constitutional question?

STATEMENT OF THE CASE

Petitioner was charged by information with violation of Health and Safety Code, section 11500 (unlawful possession of narcotics). After jury trial, a verdict of guilty was returned and the court granted probation for five years on preliminary conditions, inter alia, that petitioner serve the first ninety days in custody and pay a fine of $500.00.

Factually the record from the trial court shows in general substance, that petitioner operated a small store and soda fountain business; that his home was close by the rear of the store but not physically connected therewith nor under the same roof; to reach the petitioner's house from the back door of the store, one would turn left and walk at least eight to ten feet, turn right through the gate of the nine-foot board fence which separates the house and yard from the store and walk another 20 feet to the front door of petitioner's house which, in addition to being some distance from the store, was leased separately from the store and was on a separate lot; that he was not a licensed pharmacist; that on November 18, 1958, RAY BASCOM, Investigator for the California State Board of Pharmacy,